

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Brennan Heelan,  
Appellant,

v.

Kearney County Board of Equalization,  
Appellee.

Case No: 17R 0045

Decision and Order Affirming the  
Determination of the County Board of  
Equalization  
(Default Judgment)  
And  
Order for Costs

**For the Appellant:**  
Brennan Heelan,  
Pro Se

**For the Appellee:**  
Melodie Bellamy,  
Kearney County Attorney

The appeal was heard before Commissioners Steven Keetle and James Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in Kearney County. The legal description of the parcel is found in the Case File.

**II. PROCEDURAL HISTORY**

The Kearney County Assessor determined that the assessed value of the Subject Property was \$380,085 for tax year 2017. Brennan Heelan (the Taxpayer) protested this assessment to the Kearney County Board of Equalization (the County Board) and requested an assessed valuation of \$276,140. The Kearney County Board determined that the assessed value for tax year 2017 was \$380,085.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission issued an Order for Single Commissioner Hearing on January 22, 2018, setting the hearing date for May 25, 2018. Upon an election by a party to have this appeal heard by a panel of the Commission,<sup>2</sup> the Commission issued an Order to

---

<sup>1</sup> See Case File.

<sup>2</sup> Pursuant to Neb. Rev. Stat. §77-5015.02(3) (2016 Cum. Supp.).

Vacate Single Commissioner Designation and Amended Order for Hearing and Notice of Hearing on February 13, 2018, setting the hearing date for June 8, 2018. Upon a request for continuance by the County Board, the Commission issued an Order for Continuance with Extension of the Exhibit and Exchange Deadlines and Amended Order for Hearing on March 2, 2018, setting a new hearing date of August 6, 2018. Affidavits of Service which appear in the records of the Commission establish that a copy of each of the orders listed above was served on all parties.<sup>3</sup> The Commission held a hearing on August 6, 2018. No one appeared on behalf of the Taxpayer. The County Board moved for a default judgment in favor of the County Board's determination. Additionally, the County Board requested time to file a Motion for Costs to be assessed against the Taxpayer in this matter. The County Board was granted additional time to submit a written motion for costs and fees and an affidavit in support of the requested costs. On August 16, 2018, the County Board filed a Motion for Costs and Fees (Motion for Costs). The Motion for Costs contains an Affidavit of Service establishing that a copy of the Motion for Costs was served on the Taxpayer.<sup>4</sup> The Taxpayer did not file a response to the Motion for Costs within 10 days of the filing of the Motion.<sup>5</sup>

### **III. STANDARD OF REVIEW**

The Commission is authorized to enter default judgments.<sup>6</sup> If an appellant is not present at any hearing before the Commission within fifteen minutes of a time for hearing, for which notice has been provided to the appellant, the Commission may enter an order dismissing the appeal or order relief by default.<sup>7</sup>

“The costs of any appeal, including the costs of witnesses, may be taxed by the commission as it deems just, except costs payable by the appellant pursuant to section 77-1510.01, unless (a) the appellant is the county assessor or county clerk in which case the costs shall be paid by the county or (b) the appellant is the Tax Commissioner or Property Tax Administrator in which case the costs shall be paid by the state[.]”<sup>8</sup>

---

<sup>3</sup> See Case File.

<sup>4</sup> See Case File, Title 442 Neb. Admin. Code ch 4 §004.03B (6/11).

<sup>5</sup> See Title 442 Neb. Admin. Code ch 4 §004.03C (6/11).

<sup>6</sup> Neb. Rev. Stat. §77-5015 (2016 Cum. Supp.).

<sup>7</sup> Title 442 Neb. Admin. Code ch 4 §010.08 (6/11).

<sup>8</sup> Neb. Rev. Stat. §77-5016(12) (2016 Cum. Supp.).

#### IV. ANALYSIS

The Commission sent out the Order for Continuance with Extension of the Exhibit and Exchange Deadlines and Amended Order for Hearing for these appeals on March 2, 2018. This Order set forth a requirement that the parties exchange evidence, conduct a pre-hearing conference, and file a pre-hearing conference report prior to the hearing date. The Case File contains an Exhibit List and Witnesses List and Affidavit of Service filed by the County Board demonstrating that it provided the Taxpayer copies of exhibits it intended to offer as well as the expectation that the County Assessor and as many as three others could be called as witnesses. The Case File further contains a Pretrial Conference Report filed by the County Board indicating that the County Attorney attempted to conduct a pre-hearing conference, but the Taxpayer did not respond to the County Board's request to participate in a pre-hearing conference. The Taxpayer did not exchange evidence with the County Board or participate in a pre-hearing conference as required by the Order for Hearing and Notice of Hearing. Because the Taxpayer did not appear at the hearing within fifteen minutes of the time provided in the Order for Hearing and Notice of Hearing, entry of an order for relief by default is appropriate.

The Commission has the statutory authority to assess costs of an appeal as it deems just. The Nebraska Administrative Code contains some guidelines for assessment of cost against a party which include a failure to comply with an Order for Hearing and Notice of Hearing issued by the Commission and failing to appear for a duly noticed hearing.<sup>9</sup> The record before the Commission demonstrates that the Taxpayer failed to comply with the requirements of the Order for Hearing and Notice of Hearing, failed to respond to the County Board's inquiry regarding a pre-hearing conference, and failed to appear at the duly noticed hearing. The Commission finds that an assessment of the County Board's costs incurred against the Taxpayer as the offending party should be made.

The County Board's Motion for Costs to be Taxed to Appellant set forth the following costs:

---

<sup>9</sup> Title 442 Neb. Admin. Code ch 4 §004.02A (6/11).

Mileage to/from Lincoln:	\$143.88
Parking in Lincoln:	\$ 11.25
Hotel in Lincoln:	\$ 93.00
Copies and Mailing:	\$ 79.40
<u>Attorney's Fees:</u>	<u>waived</u>
Total:	\$327.53

The County Board's Motion for Costs to be Taxed to Appellant is accompanied by Affidavit of Service demonstrating that it served upon the Taxpayer. The Taxpayer did not respond to the Motion for Costs to be Taxed to Appellant objecting to the Motion or the costs requested by the County Board. The Commission finds and determines that it should award the Costs as requested to the County Board, payable by the Taxpayer in this proceeding.

## V. CONCLUSION

The Taxpayer failed to appear at the hearing as required by the Order for Continuance with Extension of the Exhibit and Exchange Deadlines and Amended Order for Hearing. The motion for an Order of Default Judgment should be granted and the decision of the County Board is affirmed. The Commission further finds that \$327.53 in costs should be awarded to the County Board and that the Taxpayer should pay these costs incurred by the County Board in this proceeding. Payment of \$327.53 should be submitted and made payable to the Kearney County Board of Equalization.<sup>10</sup>

## VI. ORDER

IT IS ORDERED THAT:

1. The Motion for Costs to be Taxed to Appellant is granted.
2. The Taxpayer shall pay costs in the amount of \$327.53 to the Kearney County Board of Equalization.
3. The Motion of the County Board for Default Judgment is granted.
4. The Decision of the Kearney County Board of Equalization determining the value of the Subject Property for tax year 2017 is affirmed.
5. The taxable value of the Subject Property for tax year 2017 is:

---

<sup>10</sup> Title 442 Neb. Admin. Code ch 4 §004.05 (6/11)

Land:	\$ 50,155
<u>Improvement:</u>	<u>\$329,930</u>
Total:	\$380,085

6. This Decision and Order, if no appeal is timely filed, shall be certified to the Kearney County Treasurer and the Kearney County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.)
7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
8. Each Party is to bear its own costs in this proceeding.
9. This Decision and Order shall only be applicable to tax year 2017.
10. This Decision and Order is effective for purposes of appeal on December 19, 2018.<sup>11</sup>

Signed and Sealed: December 19, 2018

---

Steven A. Keetle, Commissioner

SEAL

---

James D. Kuhn, Commissioner

---

<sup>11</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.